

DEPARTMENT OF STATE REVENUE

02920370.SLF

**SUPPLEMENTAL LETTER OF FINDINGS NUMBER 92-0370 ITC
GROSS AND ADJUSTED GROSS CORPORATE INCOME TAX
For Years 1989 Through And Including 1990**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Gross Income Tax - Small Business Corporation Status

Authority: IC 6-2.1-3-24.5; IC 6-8.1-10-6; *Caylor-Nickel Clinic v. Department Revenue*, 569 N.E.2d 765 (1991); *Department of Revenue v. Caylor-Nickel Clinic*, 587 N.E.2d 1311 (1992)

The taxpayer protested the denial of small business corporation status by the auditor.

2. Adjusted Gross Income Tax – Disallowed Deductions

Authority: IRC Sections 162

The taxpayer protested the disallowance of other deductions for checks written to its sister corporations for services rendered.

3. Adjusted Gross Income Tax – Underreported Revenues

Authority:

The taxpayer protested the auditor's calculation of revenue.

4. Administrative – Penalty

Authority: IC 6-8.1-10-2; IC 6-8.1-10-2.1(e); 45 IAC 15-11-2(e).

The taxpayer protested the imposition of the negligence penalty.

STATEMENT OF FACTS

The taxpayer operates a trucking company. The taxpayer has one primary customer and several smaller customers. The taxpayer has a sister company. The sister company has the same ownership as the taxpayer. There is no company to company ownership.

DISCUSSION

1. Gross Income Tax - SC Status

The taxpayer protests the Department's disallowance of its request for small business corporation (SC) status, as defined at IC 6-2.1-3-24.5. The taxpayer's request was denied because the returns were not timely filed. The Department routinely required all requests for SC status to be submitted on or before the filing date of the taxpayer's annual return. The taxpayer did not request any extensions and did not submit its request for SC status until after this date.

The Indiana Supreme Court in *Department of Revenue v. Caylor-Nickel Clinic*, 587 N.E.2d 1311 (1992), upheld the Indiana Tax Court's decision in *Caylor-Nickel Clinic v. Department of Revenue*, 569 N.E.2d 765 (1991). The Tax Court found that the Department could not statutorily deny SC status to a taxpayer because the taxpayer had submitted a late request for SC status. Instead the Tax Court found that the Department should grant the late filer's request for SC status and that the taxpayer had to pay a penalty pursuant to IC 6-8.1-10-6.

FINDINGS

Taxpayer's protest is sustained.

2. Adjusted Gross Income Tax – Disallowed Deductions

The taxpayer protested the disallowance of expenses. The taxpayer alleges that these were indeed ordinary and necessary business expenses. Under IRC Section 162:

(a) In General. – There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including –

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business: [1] AND

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity...

The taxpayer deducted amounts paid to a sister corporation, and provided adequate proof that the sister

company included these amounts in income. The taxpayer did not provide adequate evidence that the entertainment expenses were business related.

FINDINGS

The taxpayer's protest is partially sustained. The payments to the sister corporation are an ordinary and necessary business expense. The remainder of the disallowed deductions were not supported by adequate evidence.

3. Adjusted Gross Income Tax – Underreported Revenues

The taxpayer protested the auditor's calculation of income. The taxpayer alleged that the auditor treated transfers from savings to checking as income. The taxpayer provided bank statements for 1990.

FINDINGS

The taxpayer's protest is sustained to the extent that bank statements confirm the taxpayer's allegations.

4. Administrative – Penalty

The taxpayer protested the assessment of the negligence penalty. Taxpayer protests the imposition of the ten percent (10%) negligence penalty. The negligence penalty imposed under IC 6-8.1-10-2.1(e) may be waived by the Department where reasonable cause for the deficiency has been shown by the taxpayer. Specifically:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-2 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty-giving rise to the penalty imposed under this section. 45 IAC 15-11-2(e).

FINDINGS

The taxpayer's protest of the penalty imposed is sustained. The taxpayer has shown reasonable cause for the deficiency.